

HEALTH AND SENIOR SERVICES

SENIOR SERVICES AND HEALTH SYSTEMS BRANCH

DIVISION OF HEALTH FACILITIES EVALUATION AND LICENSING

OFFICE OF CERTIFICATE OF NEED AND HEALTHCARE FACILITY LICENSURE

Proposed Amendments: N.J.A.C. 8:39-1.2

Proposed New Rules: N.J.A.C. 8:39-41 and 8:39 Appendix G

Standards for Licensure of Long-Term Care Facilities

General Provisions

Mandatory Staff Posting and Reporting Standards

Authorized By: Heather Howard, Commissioner, Department of Health and Senior Services (with the approval of the Health Care Administration Board).

Authority: N.J.S.A. 26:2H-1 et seq., specifically N.J.S.A. 26:2H-5h.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2009-17.

Written comments on the proposal must be postmarked on or before March 6, 2009 and mailed to:

Ruth Charbonneau, Director
Office of Legal and Regulatory Affairs
Office of the Commissioner
Department of Health and Senior Services
PO Box 360
Trenton, NJ 08625-0360

The agency proposal follows:

Summary

P.L. 2005 c. 21, §§1, 2, and 3 (the "Act"), approved on January 24, 2005, codified at N.J.S.A. 26:2H-5f, 5g and 5h, requires long-term care facilities, commonly known as nursing homes, licensed in accordance with the Health Care Facilities Planning Act, N.J.S.A. 26:2H-1 et seq., to post and make available to the public direct resident care staffing levels within the facilities and to report staffing level information

to the Department. N.J.S.A. 26:2H-5h requires the Commissioner to promulgate rules to implement the Act. The proposed new rules would fulfill this statutory requirement. The proposed amendments to N.J.A.C. 8:39-1.2 would add the following new definitions: "actual hours worked," "certified nurse aide," "direct resident care," "licensed practical nurse," "number of staff," "registered professional nurse," "shift" and "staff-to-resident ratio." At N.J.A.C. 8:39-1.2, the Department proposes to amend the term Commissioner to add "or his or her designee." In addition, the Department proposes to amend the terms Commissioner and Department to remove the word "State." The Department proposes to delete the existing definition of "shift" at N.J.A.C. 8:39-1.2 and replace it with a new definition of "shift" because the proposed definition specifically addresses the material covered in the proposed new rules without materially affecting the term as it was originally used since facilities are operating on three eight-hour shifts or two 12-hour shifts.

In order to follow the Centers for Medicare and Medicaid Services (CMS) staff posting requirements at 42 CFR 483.30(e), which requires "actual hours worked" to be used as the header on the form a facility is required to post, but in actuality requires "scheduled hours to be worked" as the actual information that is to be posted, the Department is defining "actual hours worked" as the hours that a staff member is scheduled to work on the particular shift for which information is being reported.

Proposed new N.J.A.C. 8:39-41 would address staff posting and reporting standards for long-term care facilities.

Proposed new N.J.A.C. 8:39-41.1 would provide the authority and purpose of this subchapter.

Proposed new N.J.A.C. 8:39-41.2 would require a facility to post the Resident Care Staffing Report, which is incorporated into the rule by reference and available at Appendix G. Proposed new N.J.A.C. 8:39-41.2 would require a facility to post, at the start of a shift, the resident census; the scheduled hours of direct resident care each registered nurse, licensed practical nurse and certified nurse aide are to provide on the shift; the number of staff and the staff-to-resident ratio; as well as the

requirements imposed by CMS at 42 CFR 483.30(e), which would be incorporated by reference, as amended and supplemented. The proposed rule at N.J.A.C. 8:39-41.2 would also require an updated posting due to staff absences or the addition of staff; list the means by which a facility can obtain copies of the Resident Care Staffing Report; provide that the form must be translated and posted in a foreign language, as well as in English, if a language is exclusively spoken by at least 10 percent of a facility's residents; set forth that facilities must provide a copy of a completed Resident Care Staffing Report at no charge at the request of a member of the public; and establish the requirements for the retention and storage of completed daily Resident Care Staffing Reports for a period of three years.

Proposed new rule N.J.A.C. 8:39-41.3 would provide for reporting of the posted information, in aggregate form, by a facility to the Department on a monthly basis, as well as the manner in which the public may obtain a copy of the quarterly report that the Department will prepare based on the submitted information.

Proposed new N.J.A.C. 8:39-41.4 would establish that if the Commissioner determines that a facility has violated any provision of this subchapter, the Department may issue an enforcement action.

As the Department has provided a 60-day comment period for this notice of proposal, this notice is exempt from the calendar requirement, pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The proposed new rules would serve to provide information to residents, their families and the public regarding the levels of direct resident care staffing in long-term care facilities. The proposed amendments would provide guidance to long-term care facilities in complying with the proposed new rules.

The required information would be posted and readily available to residents, their families and to any member of the public that requests the information. Information would also be available to the public at large through the Department. The Department anticipates this information would lead to heightened consumer

awareness, which might reinforce efforts by long-term care facilities to assure adequate staffing levels.

Economic Impact

The 371 licensed long-term care facilities that would be affected by this rulemaking may incur additional expenses for collecting the staffing data specified in the proposed new rules, calculating the actual hours worked by staff, posting the required information and complying with reporting requirements. However, as discussed in the Summary above, the posting of staff information is already mandated by the Centers for Medicare and Medicaid Services for Medicare- and Medicaid-participating facilities (See 42 CFR 483.30(e)), which include 352 of the 371 affected facilities. The only additional requirements on the 352 facilities, which are mandated by the Act, are the posting of the staff-to-resident ratio and the monthly report of the staff-to-resident ratio to the Department.

Additional staffing costs may be entailed, as each facility would need to dedicate staff to complete the above tasks. Costs would vary between facilities based on the number of staff and the size of the facility, as this would determine the time necessary to complete the required form and the postings by shift. The new definitions are proposed to provide guidance for facilities and will have no economic impact.

Federal Standards Statement

The Department is not proposing the new rules at N.J.A.C. 8:39-41, under the authority of, or in order to implement, comply with or participate in any program established under Federal law, or under a State statute that incorporates Federal law, standards or requirements. The Department is proposing the new rules under the authority of N.J.S.A. 26:2H-1 et seq., particularly 26:2H-5h. As previously discussed in the Summary above, the Department proposes to incorporate by reference 42 CFR 483.30(e), as amended and supplemented, in the proposed new rules. As the proposed new rules do not exceed the Federal standards at 42 CFR 483.30(e), a Federal standards analysis is not required.

Jobs Impact

The Department does not anticipate that the proposed new rules and amendments would result in the generation or loss of jobs in New Jersey.

Agriculture Industry Impact

The proposed new rules and amendments would not have any impact on the agriculture industry in New Jersey.

Regulatory Flexibility Analysis

Some of the facilities that would be impacted by the proposed new rules and amendments have fewer than 100 full-time employees and therefore, would be considered small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed new rules would impose recordkeeping, compliance and reporting requirements upon long-term care facilities, as described in the Summary above.

The proposed new rules would require facilities to record and post the staffing information discussed in the Summary above. In addition, the proposed new rules would require facilities to report to the Department, on a monthly basis, the average staff-to-resident ratio for each shift that the facility has posted.

The Department has determined that it is appropriate for all long-term care facilities to comply with the proposed new rules, regardless of the size of the business, in order to comply with the statutory mandate and provide the public with information regarding a facility's staffing level. Facilities may incur financial costs addressed in the Economic Impact above. The Department believes the proposed new rules are the minimum necessary to comply with the statutory mandate.

The Department does not anticipate that facilities will need to hire professional services to comply with the proposed new rules because facilities are already posting the staffing information required by CMS, and the additional posting requirements are straightforward and can be done by the staff member already doing the staff posting.

Smart Growth Impact

The Department does not anticipate that the proposed new rules and amendments would have an impact on the achievement of smart growth or the implementation of the State Development and Redevelopment Plan.

Housing Affordability Impact

The proposed amendments and new rules would have an insignificant impact on affordable housing in New Jersey and there is an extreme unlikelihood that the rules would evoke a change in the average costs associated with housing because the proposed amendments and new rules concern requirements for licensed long-term care facilities to post and report staffing information.

Smart Growth Development Impact

The proposed amendments and new rules would have an insignificant impact on smart growth and there is an extreme unlikelihood that the rules would evoke a change in housing production in Planning Areas 1 or 2 or within designated centers under the State Development and Redevelopment Plan in New Jersey because the proposed rules only apply to the posting and reporting of staffing information by licensed long-term care facilities.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 1. GENERAL PROVISIONS

8:39-1.2 Definitions

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

"Actual hours worked" means the hours that a staff member is scheduled to work on the particular shift for which information is being reported.

...

"Certified nurse aide" means an individual who has satisfied the requirements of N.J.A.C. 8:39-43.1(a).

...

"Commissioner" means the **Commissioner of the** New Jersey [State Commissioner] **Department** of Health and Senior Services, **or his or her designee**.

...

"Department" means the New Jersey [State] Department of Health and Senior Services.

...

"Direct resident care" means clinical care services provided directly to residents by a registered professional nurse, licensed practical nurse and/or a certified nurse aide.

...

"Licensed practical nurse" means an individual licensed by the New Jersey Board of Nursing pursuant to N.J.S.A. 45:11-27.

...

"Number of staff" means the number of registered professional nurses, licensed practical nurses and certified nurse aides who are scheduled to provide and be responsible for direct resident care on a particular shift, which is calculated by dividing the total actual hours worked by each category of staff member by the number of hours in the shift.

1. Actual hours worked includes the hours for each category of staff members included in this definition for which they will be providing direct resident care during any portion of the shift.

...

"Registered professional nurse" means an individual licensed by the New Jersey Board of Nursing pursuant to N.J.S.A. 45:11-26.

...

["Shift" means a time period defined as a full working day by the facility in its policy manual.]

"Shift" means a standardized reporting period, which shall consist of, based on the facility's choice, either three eight-hour periods (day, evening and night) or two 12-hour periods (day and night).

. . .

"Staff-to-resident ratio" means a ratio calculated with the numerator being the number of staff for each category of direct resident care staff scheduled to work on a particular shift and the denominator being the number of residents in the facility during that particular shift.

. . .

**SUBCHAPTER 41. [(RESERVED)] MANDATORY STAFF POSTING AND
REPORTING STANDARDS**

8:39-41.1 Authority and purpose

(a) The Commissioner of the Department of Health and Senior Services promulgates this subchapter pursuant to the authority of N.J.S.A. 26:2H-1 et seq., particularly N.J.S.A. 26:2H-5h.

(b) The purpose of this subchapter is to provide residents, their families and the public information as to the extent of direct resident care staffing levels provided by long-term care facilities; establish requirements for long-term care facilities to post, on a shift-by-shift basis, information about direct resident care staffing levels in a visible and accessible location; and establish procedures for long-term care facilities to report aggregated data to the Department on a monthly basis.

8:39-41.2 Information required to be posted; retention

(a) A facility shall post the direct resident care staffing information described in (c) below, utilizing the Resident Care Staffing Report, incorporated herein by reference and set forth at chapter Appendix G, prior to the start of the shift for which information is being reported in a visible location in the facility that is accessible to residents and their families.

(b) A facility shall post the direct resident care staffing information required by 42 CFR 483.30(e), incorporated herein by reference, as amended and supplemented, on the Resident Care Staffing Report.

(c) Each facility shall collect the following information for each shift in the facility:

- 1. Resident census at the start of the shift for which information is being reported;**
- 2. The hours each registered nurse, licensed practical nurse and/or certified nurse aide responsible for direct resident care is scheduled to work on the shift for which information is being reported;**
- 3. Number of staff; and**
- 4. The staff-to-resident ratio.**

(d) Each facility shall post changes in the information reported on the Resident Care Staffing Report resulting from staff absences or the addition of staff within two hours of the facility's notation of such changes.

(e) The Resident Care Staffing Report form is available through the following methods:

- 1. Electronically at the Department's "Forms" webpage at <http://web.doh.state.nj.us/apps2/forms/>;**
- 2. Electronically at the Certificate of Need and Healthcare Facility Licensure Program's webpage at <http://nj.gov/health/healthfacilities/forms.shtml>;**
and
- 3. Upon written request to:**
Director
Certificate of Need and Healthcare Facility Licensure Program
New Jersey Department of Health and Senior Services
PO Box 358
Trenton, New Jersey 08625-0358

(f) If a language other than English is the exclusive language spoken by at least 10 percent of a facility's residents, the facility shall translate the Resident Care Staffing Report into that language and post the forms both in English and the other language.

(g) All facilities shall establish procedures to provide a copy of the completed Resident Care Staffing Report at no charge to any member of the public upon request.

(h) Each facility shall retain and store the completed daily Resident Care Staffing Reports for a period of three years.

8:39-41.3 Reporting requirements

(a) Each long-term care facility shall report the following information to the Department once a month on a web-based interface to be developed and communicated by the Department, which shall include the use of the information already collected on the Resident Care Staffing Report, as set forth as chapter Appendix G:

1. Broken down by shift, the average of the previous month's daily ratios of staff-to-residents for each category of direct resident care staff.

(b) The public may obtain the quarterly report, which the Department is required to complete pursuant to N.J.S.A. 26:2H-5g(d), through the following methods:

1. Electronically at the Certificate of Need and Healthcare Licensure Program's webpage at www.nj.gov/health/healthcarequality; and

2. Upon written request to:

Director

Certificate of Need and Healthcare Facility Licensure Program

New Jersey Department of Health and Senior Services

PO Box 358

Trenton, New Jersey 08625-0358

8:39-41.4 Penalty

If the Commissioner determines that a facility has violated any provision of this subchapter, the Department may issue an enforcement action pursuant to P.L. 2005, c. 21, §2(e), N.J.S.A. 26:2H-5g(e), and N.J.A.C. 8:43E-3.

(**Agency Note:** The text of proposed new N.J.A.C. 8:39 Appendix G follows without boldface symbolizing proposed new text; those portions of the appendix appearing in boldface are proposed to be so permanently.)

New Jersey Department of Health and Senior Services
INSTRUCTIONS FOR COMPLETING THE FORM HFEL-6,
RESIDENT CARE STAFFING REPORT FORM

N.J.S.A. 26:2H-5f through 5h and the rules promulgated under the statute at N.J.A.C. 8:39-41 require all long-term care facilities to post certain information on personnel scheduled to provide direct care to residents. **Information for each shift is required to be posted PRIOR to the start of the shift.**

Terms on the form are defined as follows:

Term	Definition
Name of Nursing Home:	The specific name of the nursing home.
Date:	The date that the Day shift begins and includes the month, date, and year (mm/dd/yyyy).
Shift:	Shifts are standardized for posting and reporting purposes to either three eight (8) hour shifts or two twelve (12) hour shifts.
Current Resident Census:	The number of residents in the facility at the start of the shift for which information is being posted.
Staff Category:	Type of licensed or unlicensed personnel who give direct care to residents; do not include supervisory personnel who do not provide direct resident care.
Actual Hours Worked:	<p>List for EACH employee in EACH staff category type the hours the staff member is scheduled to provide direct care during the shift.</p> <p>For example:</p> <p>One RN works 8 AM to 4 PM. For the RN category, you would type: 8AM-4PM</p> <p>Two LPNs work 8 AM – 4 PM One LPN works 10 AM – 2 PM For the LPN category, you would type: 2 8AM-4PM 10AM-2PM</p> <p>Four CNAs work 8 AM – 4 PM For the CNA category, you would type: 4 8AM-4PM</p>
Number of Staff:	<p>BEFORE the start of the shift, calculate the Number of Staff for EACH staff category separately. Divide the total number of Hours Scheduled by either 8 or 12 hours depending on the shift type selected.</p> <p>For example:</p> <p>32.0 CNA hours divided by 8 = 4.0 CNAs ENTER this number for Number of CNA Staff Scheduled.</p>
Staff to Resident Ratio:	<p>DIVIDE the NUMBER OF RESIDENTS by the NUMBER OF STAFF for each Staff category.</p> <p>For example: Number of RESIDENTS is 40 Number of CNAs is 4.0 $40/4.0 = 10$ The ratio is 1 CNA : 10 Residents; ENTER this number for CNA to RESIDENT Ratio.</p>

New Jersey Department of Health and Senior Services

RESIDENT CARE STAFFING REPORT

REPORT FOR _____
(Date)

NOTICE TO CONSUMER

Section 941 of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA) and N.J.S.A. 26:2H-5f et seq. requires skilled nursing facilities and nursing facilities to post daily for each shift the number of licensed and unlicensed nursing staff directly responsible for resident care in the facility. This information shall be displayed in a place where residents and the general public can easily view it.

Name of Nursing Home					
Shift	Current Resident Census	Staff Category	Actual Hours Worked	Number of Staff Scheduled	Staff to Resident Ratio
		Registered Nurses (RN)		____ RNs	1 RN: ____ Residents
		Licensed Practical Nurses (LPN)		____ LPNs	1 LPN: ____ Residents
		Certified Nurse Aides (CNA)		____ CNAs	1 CNA: ____ Residents

